

be waived. It is never waived. It is always a live, relevant, legitimate question, one that can be raised *sua sponte* by the Court itself.

In his dissent, Justice Alito acknowledged this point and explained it well with the following words:

Neither waiver nor *stare decisis* can justify this holding, which clashes with our general rule on third-party standing. And the idea that a regulated party can invoke the right of a third party for the purpose of attacking legislation enacted to protect the third party is stunning. Given the apparent conflict of interest, that concept would be rejected out of hand in a case not involving abortion.

The conflict of interest to which Justice Alito is referring refers to the fact that you have got here, on the one hand, a State regulating a particular act—here, abortion providers, clinics, and physicians who perform abortions. That entity, like any other entity that is otherwise going to be regulated, has an interest in being not regulated.

It makes it easier, perhaps cheaper, perhaps more lucrative for that entity, for those providers, to be in that business if they are less regulated. It makes it easier for them to do what they do and perhaps more profitable if they don't have to have admitting privileges at a hospital within 30 miles of the location of the abortion clinic.

That is very different than the potential interest of their patients. Their patients have exactly the opposite interest. Their patients have the interest in making sure that the abortion provider provides for a safe, healthy environment in which adequate care can be provided to the patient, such that as complications arise, the doctor can take the patient to a hospital and, with those admitting privileges, can go about setting in order the course of treatment that needs to be pursued.

And so Justice Alito's point was simply that, in this circumstance, you have a completely different set of interests, some that are being advanced by abortion providers, some that the State holds, and some that the patient holds. They are separate; they are distinct; and here, really, they are at odds with each other.

So Justice Alito went on to explain:

This case features a blatant conflict of interest between an abortion provider and its patients. Like any other regulated entity, an abortion provider has a financial interest in avoiding burdensome regulations such as Act 620's admitting privileges requirement. . . . Women seeking abortions, on the other hand, have an interest in the preservation of regulations that protect their health. The conflict inherent in such a situation is glaring.

So with this circumstance, the plaintiffs did not have standing. They didn't even assert the prerogative of asserting the rights of themselves. They didn't claim that they themselves had injuries that were constitutionally cognizable in court.

They instead said that they were asserting them on behalf of an injury that would be suffered, and had not yet arisen, on the part of their patients, and that is a problem.

So the Supreme Court, as far as I can tell, based on the time that I have spent reviewing the decision, the Supreme Court abandoned its ordinary standards and applied a different standard here so as to make it easier for this group of plaintiffs to raise a constitutional challenge.

Madam President, I see the majority leader has entered the Chamber, and I ask unanimous consent for permission to be able to continue my remarks after the majority leader has conducted his business, as if without interruption.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader.

Mr. McCONNELL. Madam President, I thank my friend from Utah. I will be brief.

LEGISLATIVE SESSION

Mr. McCONNELL. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. McCONNELL. Madam President, I move to proceed to executive session to consider Calendar No. 718.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Russell Vought, of Virginia, to be Director of the Office of Management and Budget.

CLOTURE MOTION

Mr. McCONNELL. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Russell Vought, of Virginia, to be Director of the Office of Management and Budget.

Mitch McConnell, Marsha Blackburn, Joni Ernst, John Boozman, Steve Daines, Cory Gardner, Pat Roberts, Mike Rounds, Mike Crapo, Roger F. Wicker, Cindy Hyde-Smith, Lamar Alexander, Shelley Moore Capito, Rob Portman, Roy Blunt, John Barrasso, John Thune.

LEGISLATIVE SESSION

Mr. McCONNELL. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021—Continued

The PRESIDING OFFICER. The Senator from Utah.

JUNE MEDICAL SERVICES V. RUSSO

Mr. LEE. Madam President, that was the first error that I think deserves to be mentioned in this context—the error apparent in the fact that the Supreme Court ignored the fact that the plaintiffs before the Court lacked standing. They just glossed over this issue. Why? Well, because it involves abortion, and I guess abortion is different.

The explanation provided by the plurality and by the Chief Justice—understanding that in order to form a majority, sometimes you have to cobble together a concurring opinion with a plurality opinion, and that is what happened here.

Their analysis on the standing issue in this case simply doesn't wash. It doesn't add up. In fact, I believe it defies what every first-year law student is taught in American law schools. It doesn't work.

Secondly, this draws attention to another problem with the Court's jurisprudence in this area. When abortion is treated differently than other things, it leads to a fair amount of tail-chasing by the Court because the Court has stepped in—starting with *Roe v. Wade* and continuing with *Casey* and the other cases since then on this topic—the Court has stepped in essentially as a superlegislative body, and it has attempted to set out a rule saying that you can't undermine what the Court has declared to be a right to access abortion.

So let's set aside, for a moment, that question of what we would be looking at if we were dealing with a law prohibiting abortion, but this isn't that. Again, this was a law, Act 620, adopted by the Louisiana State Legislature that simply required that doctors and clinics performing abortions be run by doctors having admitting privileges at a hospital within 30 miles.

It is not an abortion ban. It is just a public health and safety regulation of the same sort that you might see in effect with respect to surgical centers or other outpatient treatment clinics throughout that State.

And so, nonetheless, you have got *Roe v. Wade* and its progeny in which the Supreme Court has stepped in, basically, as a superlegislative body saying you can't impose too heavy of a burden on a woman's access to or ability to obtain an abortion.

The problem with that is there is nothing in the Constitution that says that. There is nothing in the Constitution that makes this a Federal issue. There is nothing in the Constitution that takes what is essentially a legislative judgment; namely, the legality or